



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0129]

RIN 1625-AA00

Safety Zone, Delaware River; Marcus Hook, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Delaware River in the vicinity of Marcus Hook, Pennsylvania. The safety zone will temporarily restrict vessel traffic from transiting or anchoring in a portion of Marcus Hook anchorage in order to protect the safety of life and property on the waters while underwater impulsive sound testing is conducted.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 6 p.m. on May 12, 2015. For the purposes of enforcement, actual notice will be used from 5 a.m. on March 10, 2015, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of

docket [USCG-2015-0129]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail If you have questions on this temporary rule, call or e-mail Lieutenant Brennan Dougherty, U.S. Coast Guard, Sector Delaware Bay, Chief Waterways Management Division, Coast Guard; telephone (215)271-4851, e-mail Brennan.P.Dougherty@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

#### A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior

notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule as publishing an NPRM is impracticable because immediate action is necessary to protect the maritime public. The Coast Guard was notified on February 24, 2015, of the Philadelphia Regional Port Authority's final intentions to conduct these tests in the upper portion of Marcus Hook anchorage. Because of the inherent threat to navigation, providing a notice and comment period would be impractical. Furthermore, allowing this situation to exist without a safety zone in place would expose mariners and the public to unnecessary dangers contrary to the public interest. Vessels transiting or attempting to transit through the area may be at risk, and therefore a safety zone is needed to protect the public from the hazards associated with underwater impulsive sound testing. Therefore, delay in taking action is both impracticable and contrary to public interest. For the reasons stated above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists

for making this rule effective less than 30 days after publication in the Federal Register.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

The Philadelphia Regional Port Authority (PRPA), in cooperation with the U.S. Army Corps of Engineers (USACE), Philadelphia District, will conduct tests to determine the feasibility of using loud impulsive sound to behaviorally exclude two species of endangered sturgeon from the areas where blasting will be performed for the Delaware River Main Channel Deepening Project starting in December 2015. These tests will be conducted in the upper portion of the Marcus Hook Anchorage, where sturgeon are known to commonly occur, and as far north within the anchorage as possible to minimize potential impacts to commercial vessel traffic. The tests will require anchoring a barge with the sound-producing equipment (using spuds) on the edge of, but not within, the anchorage. The barge, 40' wide by 100' long, will be equipped with anchor lighting meeting U.S. Coast Guard requirements. Nine acoustic telemetry receivers will be deployed within the test area. The telemetry receivers will be deployed

on bottom-set moorings with no surface marker floats or buoys. To reduce the possibility of vessel interference with the tests, and to prevent damage to, or displacement of, the telemetry receivers a safety zone is necessary.

#### C. Discussion of the Final Rule

To mitigate the risks associated with the underwater impulsive sound testing in Marcus Hook anchorage, the Captain of the Port, Delaware Bay will enforce a temporary safety zone in the upper portion of Anchorage 7 off Marcus Hook, as described in § 110.157(a)(8) of this chapter . The safety zone will be effective and enforced from 5 a.m. on March 10, 2015, to 6 p.m. on May 12, 2015. If this safety zone should be cancelled earlier the Captain of the Port, Delaware Bay will notify mariners via broadcast on VHF Ch.16.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Delaware Bay, or her on-scene representative. The Captain of the Port, Delaware Bay, or her on-scene representative may be contacted via VHF channel 16 or at 215-271-4807.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation will restrict access to the regulated area, the effect of this rule will not be significant because: (i) the Coast Guard will make extensive notification of the Safety Zone to the maritime public via maritime advisories so mariners can alter their plans accordingly; (ii) this rule will be enforced for a limited duration.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial

number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to anchor or transit along a portion of Marcus Hook anchorage on the Delaware River in the vicinity of Marcus Hook, Pennsylvania, from 5 a.m. on March 10, 2015 to 6 p.m. on May 12, 2015., unless cancelled earlier by the Captain of the Port once all operations are completed.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: vessel traffic will be allowed to pass through the zone with permission of the Coast Guard Captain of the Port Delaware Bay or her designated representative and the zone is limited in duration. Sector Delaware Bay will issue maritime advisories widely available to users of the Salem River.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with,

Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate



protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety

Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category

of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR Part 165, applicable to safety zones on the navigable waterways. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1

2. Add temporary § 165.T05-0129, to read as follows:

§ 165.T05-0129 Safety Zone, Delaware River; Marcus Hook, PA.

(a) Regulated area. The following area is a safety zone: all waters of the Delaware River in Anchorage 7 off Marcus Hook described in § 110.157(a)(8) of this chapter inside a boundary described as originating from 39° 48' 38"N, 075° 23' 17"W; then Northwest to 39° 48' 55"N, 075° 23' 35"W; then Northeast to 39° 49' 12"N, 075° 23' 01"W; then Southeast to 39° 49' 07"N, 075° 22' 57"W; and then Southwest to 39° 48' 38"N, 075° 23' 17"W. Mariners will be advised of this safety zone by broadcast on VHF channel 16.

(b) Enforcement period. From 5 a.m. on March 10, 2015, to 6 p.m. on May 12, 2015, unless cancelled earlier by the Captain of the Port once all operations are completed. If this safety zone should be cancelled earlier the Captain of the Port, Delaware Bay will notify mariners via broadcast on VHF Ch.16.

(c) Regulations. All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) All persons or vessels wishing to transit through the Safety Zone described in paragraph (a) of this section must request authorization to do so from the Captain of the Port or her designated representative 30 minutes prior to the intended time of transit.

(2) Vessels granted permission to transit must do so in accordance with the directions provided by the Captain of the

Port or her designated representative.

(3) To seek permission to transit the Safety Zone, the Captain of the Port's representative can be contacted via marine radio VHF Channel 16 or at 215-271-4807.

(4) This section applies to all vessels wishing to transit through the Safety Zone except vessels that are engaged in the following operations:

- (i) Enforcing laws;
- (ii) Servicing aids to navigation; and
- (iii) Emergency response vessels.

(5) No person or vessel may enter or remain in a safety zone without the permission of the Captain of the Port;

(6) Each person and vessel in a safety zone shall obey any direction or order of the Captain of the Port;

(7) No person may board, or take, or place any article or thing on board, any vessel in a safety zone without the

permission of the Captain of the Port; and

(8) No person may take or place any article or thing upon any waterfront facility in a safety zone without the permission of the Captain of the Port.

(d) Definitions. The Captain of the Port means the Commander of Sector Delaware Bay or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on her behalf.

(e) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the Safety Zone by Federal, State, and local agencies.

Dated: March 5, 2015.

STEPHEN P. METRUCK,  
Rear Admiral, U.S. Coast Guard,  
Commander, Fifth Coast Guard District.

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3/23/2015]